

2005. The Claimant gave notice within 75 days of his injuries and had probable cause to give notice over 10 days after of [sic] the injuries.¹

Respondent contends Judge Clark erred. Respondent argues claimant failed to prove he sustained a back injury that arose out of and in the course of his employment. In the alternative, if the Board would find that claimant injured his back at work, respondent contends claimant sustained a subsequent non-work-related injury to his back. And finally, respondent contends claimant failed to provide timely notice of the alleged work-related accident.

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant argues the evidence establishes that he injured his back due to repetitive work activities he performed for respondent. In addition, claimant argues he provided respondent with timely notice of the accidental injury as there was “just cause” to extend the period for such notice.

The only issues before the Board on this appeal are:

1. Is claimant’s present need for medical treatment related to a back injury he sustained at work or, instead, to a subsequent non-work-related incident?
2. Did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties’ arguments, the Board finds and concludes:

Claimant commenced working for respondent in late December 1996. Claimant’s job as a bulk pad specialist required him to transfer oil products from railcars to holding tanks and required him to handle 55-gallon drums. The work was physically demanding and required claimant to lift heavy weights.

In 2004, claimant began experiencing symptoms in his left hip, which he attributed to arthritis. Only later did claimant learn that his symptoms were probably related to his work. Nonetheless, despite those symptoms claimant continued to work for respondent through Friday, February 18, 2005, when, according to claimant, he left work early due to symptoms in his left hip, buttocks, and left leg. Claimant did not work over the weekend but, nevertheless, his symptoms progressed.

¹ ALJ Order (June 30, 2005).

On Monday, February 21, 2005, claimant intended to report to work but he experienced additional symptoms after changing a flat tire on his vehicle.

I got up that morning and I went outside. My back and everything was still hurting. I went outside and saw I had a flat tire. I changed my flat. I came back in. My back was still hurting. I bent down to pick up my keys and stuff there and couldn't hardly raise back up. That is when I called in sick. That was probably about a quarter to six that morning. I called in sick. I left a message on Jeff's phone and told him that I wouldn't be able to make it in, my back and everything was hurting.²

Claimant reported to work on Tuesday, February 22, 2005, but respondent told him to seek medical treatment as he was using crutches to help him walk. Claimant then went to Wesley Medical Center where he was told his symptoms were related to his back. According to claimant, the medical center gave him a CT scan, which revealed two bulging discs in his back. The medical center referred claimant to the Veterans Administration hospital for additional treatment where he began receiving treatment from a neurosurgeon, Dr. Leonard A. Klawfta.

At this stage of the claim there is not very much evidence addressing the relationship of claimant's low back symptoms to his work. On April 5, 2005, Dr. Klawfta commented in his office notes that claimant's symptoms were work-related.

This problem began when he was at work, even though there was no specific injury, and in my opinion, this is work-related.³

But Dr. B. Theo Mellion saw claimant at Dr. Klawfta's request on May 2, 2005, and concluded claimant's symptoms were not related to work.

He provided an MRI of the lumbar spine, which reveals disc degeneration, some disc space collapse, annular bulging at L3-L4 with bilateral foraminal narrowing, as well as a broad-based annular bulge at L4-L5 associated with facet hypertrophy, and moderately severe spinal canal and bilateral lateral recess stenosis as well as a right paracentral disc bulge at L5-S1. These changes are mostly degenerative in nature and since there is no inciting event it is unlikely the result of any type of work-related injury.⁴

² P.H. Trans. at 14, 15.

³ *Id.*, Cl. Ex. 1.

⁴ *Id.*, Cl. Ex. 2.

After learning that his symptoms were emanating from his low back rather than his hip and after learning that his symptoms were probably related to the work he performed for respondent, in March 2005 claimant requested respondent to provide him workers compensation benefits.

At the preliminary hearing, Judge Clark observed claimant and respondent's Mike Hall and Jeff Owens testify. Despite adverse testimony from Mr. Hall and Mr. Owens, the Judge held claimant injured his back at work and provided respondent with timely notice of the back injury.

For preliminary hearing purposes, the Board finds this record establishes by the narrowest of margins that claimant injured his back working for respondent. Conversely, the Board readily adopts the Judge's conclusion that these facts establish that claimant had "just cause" to extend the time period from 10 days to 75 days for reporting his accidental injury.⁵ Claimant's testimony is convincing that he was not aware his symptoms were related to his work until he began receiving medical treatment.

In short, the June 30, 2005, preliminary hearing Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁶

The parties are reminded that only those medical records that are material to an issue need be introduced into the record.

WHEREFORE, the Board affirms the June 30, 2005, preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of August, 2005.

BOARD MEMBER

⁵ See K.S.A. 44-520.

⁶ K.S.A. 44-534a(a)(2).

c: Gary K. Albin, Attorney for Claimant
Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director